

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAN FRANCISCO TECHNOLOGY, INC.,

Plaintiff,

-against-

MAYBELLINE LLC, MEDTECH PRODUCTS
INC., SOFTSHEEN-CARSON LLC,

Defendants.
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USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: May 19, 2011

ORDER

10 Civ. 5931 (PAC)

HONORABLE PAUL A. CROTTY, United States District Judge:


Defendants Maybelline LLC, Medtech Products Inc., and Softsheen-Carson LLC (“Defendants”) move to dismiss the instant action, urging that Plaintiff San Francisco Technology, Inc. (“Plaintiff”) has failed to plead factual allegations in its Complaint that state a claim upon which relief may be granted.

On March 15, 2011, the United States Court of Appeals for the Federal Circuit decided In re BP Lubricants USA Inc., 637 F.3d 1307 (Fed. Cir. 2011), affirming that the heightened pleading standard of Federal Rule of Civil Procedure 9(b) applies to false marking claims under 35 U.S.C. § 292, and stating that “a complaint alleging false marketing is insufficient when it only asserts conclusory allegations that a defendant is a ‘sophisticated company’ and ‘knew or should have known’ that the patent expired.” Id. at 1309. Here, Plaintiffs simply make conclusory allegations that Defendants have “made many decisions to [falsely mark their products],” falsely mark their products to “induce the public to believe that such product is protected,” and that Defendants had “knowledge that nothing is protected by an expired patent.” (E.g., Compl. ¶ 101-02.) As a result, Plaintiffs fail to meet the standard of particularity demanded by Rule 9(b) and the BP Lubricants decision.

Accordingly, Defendants' motion to dismiss is GRANTED. Plaintiff's Complaint is, therefore, dismissed without prejudice. The Clerk of Court is directed to terminate the pending motions at docket numbers 333 and 337. The case shall remain open. Plaintiff may submit an amended complaint by June 30, 2011.

Dated: New York, New York
May 19, 2011

SO ORDERED



PAUL A. CROTTY
United States District Judge